

APPEAL NO. 020437
FILED MARCH 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2002. The hearing officer resolved the disputed issue by concluding that the compensable injury sustained by the appellant (claimant) on _____, does not extend to and include degenerative changes, spinal stenosis at L4-5, spondylosis, and/or lumbar disc displacement. The claimant appealed, arguing there was medical evidence that established the compensable injury did extend to degenerative changes, spinal stenosis at L4-5, spondylosis, and/or lumbar disc displacement. In its response, the respondent (carrier) argues that the claimant failed to meet his burden of proof and that the determination of the hearing officer should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant, a mechanic, sustained a compensable injury on _____. The claimant testified he was stepping down from a forklift when he felt pain in his back. A peer review doctor opined in correspondence dated November 8, 2001, that the anatomic changes and symptoms suffered by the claimant were a result of his degenerative condition with stenosis in the lumbar spine and not caused by the act of stepping down from a forklift. The hearing officer was not persuaded by the opinions of the claimant's treating doctor and a physician to whom the claimant was referred to because both of the histories of the mechanism of injury included in the record differed from that to which the claimant testified.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.- Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that there is sufficient evidence to support the hearing officer's determination that the compensable injury sustained does not extend to the degenerative changes, spinal stenosis, spondylosis, and/or lumbar disc displacement.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Terri Kay Oliver
Appeals Judge